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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-219362 **DATE:** August 20, 1985
MATTER OF: Beech Aerospace Services, Inc.

DIGEST:

1. Protest will not be dismissed for failure to furnish the contracting officer a copy of the protest 1 day after filing as required by GAO's Bid Protest Regulations, where the 3-day delay in doing so did not delay protest proceedings.
2. Allegation that late receipt of solicitation materials prejudiced protester in preparing its proposal is untimely, and will not be considered, where the protester was aware of short timeframe for proposal preparation, but did not protest until after learning of award to another offeror nearly 3 months after the closing date for submission of proposals.
3. There is no basis for finding a deliberate effort by the contracting agency to exclude the protester from competing by failing to furnish amendments in a timely manner where the agency states that all amendments were picked up personally by protester's representative and the protester neither denies the agency's account of the facts nor presents other evidence of purposeful agency action.
4. Protest that incumbent contractor harassed employees who signed letter of intent to take employment with protester if awarded contract concerns a dispute between private parties not for consideration under GAO's Bid Protest Procedures.
5. Unsupported allegation that agency improperly disclosed protester's price during negotiated procurement, which is denied by agency, does not meet protester's burden of proving its case.

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Beech Aerospace Services, Inc. (Beech), protests the award of a contract to EC Services Company under request for proposals (RFP) No. F64719-85-R-0031, issued by the Pacific Air Force Contracting Center, Clark Air Force Base, the Philippines, for the operation and maintainance of remotely piloted vehicle targets and facilities. Beech contends the procurement was deficient for several reasons. We dismiss the protest.

Preliminary, the Air Force argues that the protest should be dismissed because Beech failed to furnish a copy of the protest to the contracting officer within 1 working day after the protest was received in the General Accounting Office as required by our Bid Protest Regulations. 4 C.F.R. § 21.1(d) (1985). A protest may be dismissed for failure to comply with the requirements of this section. 4 C.F.R. § 21.1(f).

Beech's protest was received in our Office on June 6, 1985, and the Air Force states that the contracting officer did not receive a copy of the protest until June 11, 1985, 3 working days later.

The agency report was due in our Office by July 12, however, and was received on that date. Since the delay in receipt of the protest by the agency, thus did not result in a delay of the protest proceedings, Beech's failure to furnish a copy of the protest to the procuring activity 1 day after filing in our Office does not require dismissal of the protest. Container Products Corp., B-218556, June 26, 1985, 64 Comp. Gen. ___, 85-1 C.P.D. ¶ 727.

Beech contends in its original protest submission that the Air Force deliberately failed to furnish Beech with timely copies of amendments or modifications to the RFP, some of which addressed questions raised by Beech, in order to disadvantage Beech in the procurement process and did, in fact, severely reduce Beech's competitiveness. Beech concedes in subsequent submissions, in agreement with the agency, that it, in fact, received all essential procurement data (including the three amendments) by March 7, only 4 days before the proposal submission deadline. Beech complains that it never received the data through regular agency channels, however, and that the delays resulting from obtaining the data through unofficial channels prejudiced Beech in its proposal preparation. This allegation is dismissed as untimely.

The March 11 closing date for submission of proposals was evident on the face of amendment 0001. Any protest that this date afforded insufficient time to prepare a competitive proposal thus should have been filed prior to the closing date or as soon thereafter as possible. Echelon Service Co., B-208720.2, July 13, 1983, 83-2 C.P.D. ¶ 86. Instead of protesting to the Air Force as soon as it should have known that the time for preparing its proposal was inadequate, Beech waited until June 6 to protest, after learning it had not received the award. This aspect of Beech's protest therefore is untimely and will not be considered. See 4 C.F.R. § 21.2(a)(1).

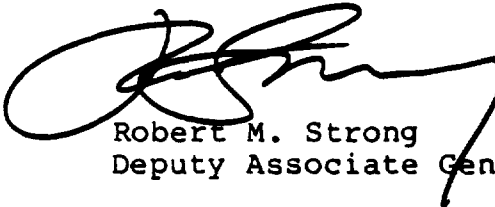
Beech has presented no evidence in support of its claim that the Air Force deliberately attempted to disadvantage Beech in the procurement. Indeed, the Air Force reports that Beech representatives actually picked up copies of all of the amendments. Beech does not specifically deny the agency's account of the facts in this regard. We accordingly find no basis for this portion of the protest. Nuclear Assurance Corp., B-216076, Jan. 24, 1985, 85-1 C.P.D. ¶ 94.

Beech also alleges that employees of the incumbent contractor from whom letters of intent were secured, as is usual for identifying personnel to be hired from the incumbent staff, were threatened by the incumbent contractor with dismissal for disloyalty. Beech concedes that the Air Force did not have any direct control or involvement in the harassment of potential key employees to be hired from the incumbent contractor, but contends that the contracting officer failed to take any action to rectify the damage done to the competitive atmosphere by the harassment. This allegation relates to a dispute between private parties that is not for consideration under our Bid Protest Regulations where the contracting agency did not participate in the harassment. SETAC, Inc., 62 Comp. Gen. 577 (1983), 83-2 C.P.D. ¶ 121.

Finally, Beech alleges that the amount of its offer, exact to the dollar, improperly was revealed to a competitor subsequent to the closing date for receipt of initial proposals. Beech states it overheard the competitor recite Beech's prices at the preproposal conference. The Air Force denies that Beech's proposal was disclosed. It states that all offerors' initial proposals remained sealed until the day after the closing date for receipt of the proposals and that all best and final offers also were kept sealed until the day after the closing date for the receipt of the best and final proposals.

Beech's argument is based on its reasoning that since Beech personnel did not divulge the information, it must have been divulged directly or indirectly by the procuring agency. Beech has presented absolutely no evidence, however, that the Air Force in fact disclosed proposal prices, and this contention thus amounts to mere conjecture. Our Office will not find improper action by an agency based on such conjecture or inference. Dynal Associates, Inc., B-197348, July 14, 1980, 80-2 C.P.D. ¶ 29.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel